

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

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DONALD RAY EPHRAIM,

Petitioner,

v.

RICK THALER, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,

Respondent.

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2:08-CV-0214

ORDER OVERRULING OBJECTIONS,
ADOPTING REPORT AND RECOMMENDATION and
DISMISSING PETITION FOR A WRIT OF HABEAS CORPUS

Petitioner DONALD RAY EPHRAIM has filed with this Court an application for a writ of habeas corpus by a person in state custody. On August 17, 2011, the United States Magistrate Judge issued a Report and Recommendation in this cause, recommending therein that petitioner's habeas petition be dismissed for failure to exhaust state court remedies. On September 12, 2011, petitioner filed objections to the Report and Recommendation.

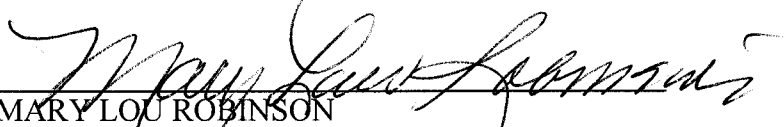
By his objections, petitioner appears to argue production of the mail log at the Clements Unit will prove he sent an 11.07 state habeas corpus application to the Texas Court of Criminal Appeals, thereby exhausting his state court remedies. Petitioner was advised twice by that court, however, that it did not receive his mailing. The court also advised petitioner of the proper procedure to file a state writ of habeas corpus, including filing any petition he wished to file with his district clerk of his county of conviction. Production of the mail log, even assuming it reflects petitioner forwarded legal mail to the Texas Court of Criminal Appeals on or before

November 21, 2007, will not demonstrate the Texas Court of Criminal Appeals ever received his state habeas petition or has had an opportunity to answer the claims he now raises in his federal habeas petition. Petitioner has not exhausted his state court remedies as required for federal habeas corpus relief.

The undersigned United States District Judge has made an independent examination of the record in this case and has considered the objections made by petitioner to the Report and Recommendation. The objections filed by petitioner are without merit and are hereby OVERRULED. The Magistrate Judge's Report and Recommendation is hereby ADOPTED. Accordingly, the petition for a writ of habeas corpus filed by petitioner is DISMISSED.

IT IS SO ORDERED.

ENTERED this 15th day of September 2011.


MARY LOU ROBINSON
UNITED STATES DISTRICT JUDGE